IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO.1070 OF 2002 (O&M)
DECIDED ON : 22.07.2015

United India Assurance Company Limited
...Appellant

versus

Jagbir Singh and others
...Respondents

CORAM : HON'BLE MR. JUSTICE K.C .PURI

Present : Mr. Sanjeev Pabbi, Advocate,
for the appelalnt.

Mr. S. S. Kharb, Advocate,
for respondent No.3.

K. C. PURI, J.

The instant appeal has been filed by the United India Assurance Company against the Award dated 10.11.2001 passed by Shri Manjit Singh, Motor Accident Claims Tribunal, Panipat, vide which the claim petition preferred by the claimants was partly accepted and a sum of ₹1,25,000/- was allowed as compensation on account of death of minor Krishan Deep in a motor vehicular accident.

Brief facts of the case are that on 16.11.1999, claimant Jagbir Singh was going to his house from his shop at railway road, along with his minor son Krishan Deep and daughter Rano. When they reached near Kohli STD, one tractor make Swaraj bearing registration NO. HR-06-E-2431 being driven by respondent NO.1 in a rash and negligent manner and at a very high speed, came from Samalkha side. The said tractor hit Krishan Deep due to which he received multiple grievous injuries and he died on his way to PHC-Samalkha. It was further pleaded in the claim petition that the accident had taken place due to rash and negligent driving of the tractor in question. The deceased was only 10 years old at the time of his death.

On put to notice, respondent No.1 appeared and filed written statement denying the contents of claim petition. It was further pleaded that no accident had taken place due to rash and negligent driving of respondent No.1 with the tractor in question.

Respondent No.2- Insurance Company appeared and filed separate written statement pleading therein that there is violation of terms and conditions of the insurance policy. The tractor was attached with two trollies at the time of accident. The Insurance Company also pleaded that respondent No.1 was not holding a valid and effective driving license. The other averments were denied.

From the pleadings of parties, following issues were framed :-

1) Whether the accident in question took place due to rash and negligent driving of tractor No. HR-06E-2431 ? OPP

2) Whether the petitioners are entitled to compensation, if so to what amount and from whom ? OPP

3) Whether the tractor in question was being driven against the terms and conditions of the Insurance policy, if so its effect ? OPR

4) Relief.

The learned Tribunal, after adjudication, returned the findings on Issue No.1 in favour of the claimants. The remaining issues were also decided in favour of the claimants. Consequently, the claim petition was partly accepted and a sum of ₹1,25,000/- was allowed as compensation to the claimants.

Feeling dissatisfied with the above said Award dated 10.11.2001 passed by Motor Accident Claims Tribunal, Panipat, the Insurance Company has preferred the instant appeal.

I have heard learned counsel for the parties and have gone through the records of the case.

The only point urged before me during the course of arguments is that the tractor was attached with two trollies and as such, there is violation of terms and conditions of the insurance policy and on that account, Insurance Company should be given recovery rights against the owner and driver of the offending vehicle.

Learned counsel for the appellant has relied upon authority ***"Mam Chand and another vs Sunita Devi and others" 2012 (1) PLR 404*** and judgment passed by this Court in ***FAO No. 2514 of 2013 decided on 20.08.2014 titled as "Dev Raj and another vs Manoj Kumar @ Kalu and another".***

I have carefully considered the submissions made by learned counsel for the appellant and have gone through the above said authorities.

After careful reappraisal of the evidence, no ground for interference in the instant appeal is made out.

So far as authorities ***Mam Chand and anothers' case (supra)*** and ***Dev Raj and anothers' case (supra)*** are concerned, both of them relate to using the tractor for commercial purpose. There is no such type of dispute in the present case. It is nobody case that the trollies were loaded with any article. The Insurance Company wants to avoid its liability only on the ground that two trollies were affixed with the tractor at the time of accident and as such, it is not liable to pay the amount of compensation.

Though the argument looks attractive but the same is without any legal force.

The Insurance Company has to prove the violation of terms and condition of the insurance policy.

Learned counsel for the appellant could not point out any type of violation in the terms and conditions of the policy. Moreover, according to facts of the case in hand, the accident had taken place due to rash and negligent driving of the tractor and the trollies are not involved. As per the case of complainant, the tractor hit the deceased from back side due to which he died. In these circumstances, it cannot be said that there is violation of the terms and conditions of the insurance policy.

No other point has been urged before me.

In view of the above discussion, the appeal is without any merit and the same stands dismissed.

JULY 22, 2015 **(K. C. PURI)**
shalini **JUDGE**